

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

KEVIN FENG GAO,

Defendant.

SEALED INDICTMENT

25 Cr. _____

25 CRIM 053

COUNT ONE
(Bank Fraud)

The Grand Jury charges:

Overview of the Scheme

1. From at least in or about February 2017 through at least in or about October 2017, KEVIN FENG GAO, the defendant, and others known and unknown, engaged in a scheme to defraud an FDIC insured bank ("Bank-1") into opening an unauthorized bank account (the "Unauthorized Account") in the name of a company ("Company-1") that managed a residential development project in Manhattan ("Development-1"). Company-1 did not authorize GAO to open or use the Unauthorized Account. After causing the Unauthorized Account to be opened at Bank-1 based on false statements and representations, GAO used the Unauthorized Account to steal at least \$30 million. In particular, an investment company ("Investment Company-1") transferred \$30 million into the Unauthorized Account pursuant to an agreement to fund an investment in Development-1. Rather than those funds being invested in Development-1, as Investment Company-1 understood would occur, GAO, using the Unauthorized Account, caused the \$30 million from Investment Company-1 to be transferred to other bank accounts, including certain accounts under GAO's control.

Background on Development-1

2. Development-1 is a luxury real estate development project located in the vicinity of midtown Manhattan, New York. Among other things, Development-1 includes a large building that houses condominium residences.

3. At all times relevant to this Indictment, Development-1 was managed and developed as a joint venture between a real estate company based in Connecticut (“Company-2”) and a real estate company affiliated with the government of Shanghai, China (“Company-3”). KEVIN FENG GAO, the defendant, was and is an executive of Company-3.

4. Company-2 and Company-3 owned and operated Development-1 through several corporate entities, including Company-1, which was an entity owned in part by Company-2 and Company-3. At all times relevant to this Indictment, Company-2 acted as the managing member of Company-1.

The Bank Fraud Scheme

5. In or about February 2017, KEVIN FENG GAO, the defendant, and others known and unknown, acting without the authorization of Company-1, applied to open the Unauthorized Account at a Manhattan branch of Bank-1. In doing so, GAO made false statements and representations to representatives of Bank-1, including falsely representing that GAO was opening the Unauthorized Account with Company-1’s permission. Additionally, when a representative of Bank-1 asked GAO to provide Bank-1 with a copy of Company-1’s operating agreement, GAO provided Bank-1 with a fraudulent document purporting to be said operating agreement when, in truth and in fact, it was not. Subsequently, Bank-1 opened the Unauthorized Account in Company-1’s name.

6. In or about June 2017, Investment Company-1 executed an agreement

(“Agreement-1”) to provide \$30 million to finance a purported investment in Development-1. Another executive (“Executive-1”) at Company-3 signed Agreement-1 on behalf of Company-3 and KEVIN FENG GAO, the defendant, notarized Executive-1’s signature on Agreement-1.

7. On or about June 15, 2017, Investment Company-1 transferred \$30 million pursuant to Agreement-1 to the Unauthorized Account secretly controlled by KEVIN FENG GAO, the defendant. After Investment Company-1 sent its approximately \$30 million to the Unauthorized Account, between at least in or about June 2017 and in or about October 2017, GAO, and others known and unknown, caused Investment Company-1’s approximately \$30 million to be transferred to bank accounts under the control of GAO and his co-conspirators. Through such transfers and the initial creation of the Unauthorized Account based on misrepresentations, GAO and his co-conspirators stole the approximately \$30 million that Investment Company-1 intended to invest in Development-1.

Statutory Allegations

8. From at least in or about February 2017 through at least in or about October 2017, in the Southern District of New York and elsewhere, KEVIN FENG GAO, the defendant, knowingly executed, and attempted to execute, a scheme and artifice to defraud a financial institution, as that term is defined in Title 18, United States Code, Section 20, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such a financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, GAO made, and caused to be made, false statements to Bank-1, an FDIC-insured bank, regarding the Unauthorized Account in order to cause funds to be fraudulently transferred into the custody of Bank-1 and to transfer funds in the custody of Bank-1.

(Title 18, United States Code, Section 1344.)

FORFEITURE ALLEGATION

9. As a result of committing the offense alleged in Count One of this Indictment, KEVIN FENG GAO, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any and all property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as a result of the commission of said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense.

Substitute Assets Provision

10. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and

Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981, 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)



FOREPERSON

Danielle R. Sassoon

DANIELLE R. SASSOON
United States Attorney